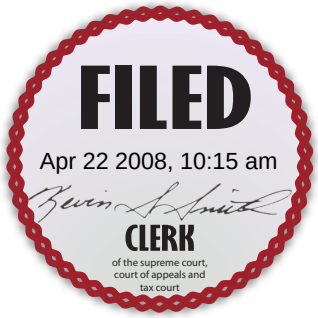

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IN THE
COURT OF APPEALS OF INDIANA

M.C.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0709-JV-508
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Danielle Gregory, Magistrate
Cause No. 49D09-0706-JD-1844

April 22, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

M.C. appeals his adjudication as a juvenile delinquent for having committed an act that would have been the offense of carrying a handgun without a license, a class A misdemeanor, if committed by an adult.

We affirm.

ISSUE

Whether the trial court erred in admitting evidence of the handgun found in M.C.'s waistband.

FACTS

At approximately 11:00 a.m. on June 11, 2007, Officers Justin Lawrence and Daniel Bennett of the Indianapolis Metropolitan Police Department were dispatched to a Denny's restaurant on the report of a person walking back and forth on the sidewalk in front of the restaurant for "quite some time." (Tr. 42). The report included a description of the person: a white male wearing blue jeans, white T-shirt, a camouflage baseball cap with a bandana underneath it, and black tennis shoes.

As the officers arrived, Lawrence saw M.C. "pacing back and forth, kind of nervously." (Tr. 11). As their squad car "pulled up," M.C. "started to . . . walk away." *Id.* Lawrence verified that M.C.'s attire matched the description given in the report. Lawrence called, "Hey, can I ask you . . ." and walked toward M.C., *id.*, noting the "bandana bunched up underneath his baseball cap." (Tr. 17). Lawrence sought "to check on his welfare and to see what he was doing pacing outside the" restaurant. (Tr. 16). As Lawrence asked him a couple of questions, M.C. was "fidgeting with his hands back and

forth," his "voice was . . . trembling," and he "seemed real nervous." (Tr. 16, 17). Lawrence then "noticed a bulge . . . in the front of his waistline." (Tr. 18).

At that point, "for officer safety, [he] conducted a *Terry* pat down." (Tr. 19). When Lawrence patted M.C.'s "waistline on the outside of his clothing," he "immediately" felt "[t]he handle of a pistol." (Tr. 19). Lawrence grabbed M.C.'s wrist, and Bennett removed a .38 caliber Smith and Wesson handgun.

On June 12, 2007, the trial court authorized the State to file a petition alleging that M.C. was a delinquent child for having committed an act that would have been the offense of carrying a handgun without a license, a class A misdemeanor, if committed by an adult. The trial court conducted the fact-finding hearing on July 9, 2007.

After Officer Lawrence testified to his observations that led him to conduct a *Terry* pat-down, M.C. objected to testimony regarding the handgun, arguing the State had failed to "prove that the stop" of M.C. "was legal." (Tr. 19). M.C. argued there was no evidence of any "criminal activity afoot," or that M.C. "was doing anything that would lead to reasonable suspicion that he should be searched." (Tr. 19). The State responded that the "bulge in his pants" led to "reasonable suspicion for the *Terry* stop." (Tr. 21). The trial court overruled the objection, finding that the "*Terry* pat down" was warranted based on the facts that Officer Lawrence "received a dispatch with a very specific description," M.C. matched "that description" and "appeared nervous walking back and forth," and Lawrence had "noticed a bulge" at M.C.'s waistline. (Tr. 22).

At the conclusion of the hearing, the trial court found that the allegation of the petition was true. It adjudicated M.C. a delinquent child.

DECISION

M.C. argues that his adjudication must be reversed because the facts did not give rise to the reasonable suspicion required to allow the officers to subject M.C. to a pat down search pursuant to *Terry v. Ohio*, 392 U.S. 1 (1967). However, because this is not an appeal from an interlocutory order denying his motion to suppress, the issue is appropriately framed as whether the trial court abused its discretion by admitting the evidence at trial. *Bentley v. State*, 846 N.E.2d 300, 305 (Ind. Ct. App. 2006), *trans. denied*. Our standard of review with regard to rulings on the admissibility of evidence is essentially the same whether the challenge is made by a pretrial motion to suppress or by trial objection. *Ackerman v. State*, 774 N.E.2d 970, 974 (Ind. Ct. App. 2002), *trans. denied*. We review a trial court's determination as to the admissibility of evidence for an abuse of discretion, and we will reverse only when the decision is clearly against the logic and effect of the facts and circumstances presented. *Smith v. State*, 754 N.E.2d 502, 504 (Ind. 2001).

As M.C. properly asserts, the Fourth Amendment prohibits warrantless searches. However, there are exceptions to the warrant requirement. *Black v. State*, 810 N.E.2d 713, 715 (Ind. 2004). One exception is the *Terry* stop, whereby police may, without a warrant or probable cause, briefly detain an individual for investigatory purposes if, based upon specific and articulable facts, the officer has a reasonable suspicion that criminal activity "may be afoot." *Terry*, 392 U.S. at 30. Such "reasonable suspicion" allows a *Terry* stop -- a "limited investigatory stop on the street involving a brief question or two and a possible frisk for weapons." *Woods v. State*, 547 N.E.2d 772, 778 (Ind.

1989), *cert. denied*. *Terry* permits a "reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing" with an armed person, and the officer

> need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.

Terry, 392 U.S. at 27.

Here, police had received a report from a concerned citizen about a man repeatedly pacing the sidewalk outside a restaurant for a significant period of time. The citizen provided a description of the man that included numerous details. The officers dispatched to investigate the report arrived to find M.C., who matched the description – including a bandana around his head underneath his baseball cap. They observed M.C. "just nervously pacing back and forth," "walking to one end of the little sidewalk . . . and then back to the other end." (Tr. 13, 17). Thus, the man was neither entering nor exiting the restaurant. Further, when M.C. saw the officers arrive, he started to walk away. M.C.'s appellate argument does not challenge that this behavior warranted a "limited investigatory stop, involving a question or two." *Woods*, 547 N.E.2d at 778.

Lawrence asked several questions. M.C. "fidget[ed] with his hands back and forth," answered in a "trembly voice," and "seemed real nervous." (Tr. 16, 17). Lawrence then noticed a bulge in the front of M.C.'s waistline. This followed the officer's observation of M.C.'s pacing outside the restaurant, his nervous reaction to the officers, and his fidgeting hand movements. Further, the waistband area of his pants would be deemed by the reasonably prudent man to be a likely location for carrying a

firearm, more especially in the month of June when people generally wear less clothing that would hide a weapon of some type. These facts would give rise to Lawrence's reasonable belief that M.C. was "armed" and that "his safety or that of others was in danger." *Terry*, 392 U.S. at 27.

M.C. posits that the bulge might have been a cellular phone or portable music player. However, as the State notes, "it could also have been a gun." State's Br. at 6. Here, the circumstances as described above lead to the reasonable belief that M.C. might be armed; therefore, a brief pat down search for the officers' safety was warranted. The trial court did not abuse its discretion when it admitted evidence of the firearm carried by M.C.

Affirmed.

BAKER, C.J., and BRADFORD, J., concur.